IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

G.R.Agarwal Builders & Developers Limited. vs. State of Rajasthan & Ors.
(S .B.Civil Writ Petition No.899/06)

Dated:- 25.10.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.C.S.Kotwani, for the petitioner.
Mr.B.L.Tiwari,Dy.Government Advocate for the respondents.

BY THE COURT:-

This writ petition is directed against order dated 18.1.2006 (Annexure 5), dated 7.1.2006(Annexure 8) and dated 9.5.2005 (Annexure 9)issued by Mining Engineer ,Jodhpur ,whereby while assessing the liability of royalty payable by the petitioner , the Executive Engineer , Public Works Department ,National Highway, Jodhpur has been directed that payment of the final bill to the petitioner Contractor against the contract executed by him should be made only after deduction of the royalty amount outstanding .

The brief facts leading to the filing of the present writ petition are that the petitioner a ”AA class” contractor was awarded a contract by Executive Engineer, P.W.D. N.H.Division, Jodhpur on behalf of the Governor of the State of Rajasthan, vide work order dated 23.8.2005 (Annexure 1) for the work of periodical renewal of pavement 25 m.m. SDBC paver on N.H.

112 Bar- Barmer Road , 105/0 to 117/0 km. Similarly, the contracts were awarded to the petitioner by the Executive Engineer , P.W.D. N.H.Division, Pali vide work order dated 27.1.2005 (Annexure 2) and 20.10.2004 (Annexure 3) for the work of periodical renewal of pavement in Kms. 356/0 to 365/0 and 365/0 to 371/0 on N.H. 65, Fatehpur – Nagaur -Jodhpur-Pali Road. After completion of the work , the petitioner submitted the final bills , however, the payments thereof were not made to the petitioner for want of "No Objection Certificate" from the Mining Department , Government of Rajasthan and in view of the specific directions issued vide Annexures 5, 8, and 9 referred supra.Hence, this petition.

The respondents in their reply to the writ petition have taken the stand the grit used by the petitioner in performance of the work was not royalty paid. The receipts submitted by the petitioner do not contain the name of the contractor and the same are not admissible for the construction work. It is contended on behalf of the respondents that as per condition no. 5 of notification dated 13.11.2000 , the contractor has submitted royalty paid Ravanna for the minerals purchased by him from the mining lease holders.

I have heard the learned counsel for the parties and considered the rival submissions.

It is not in dispute that for the completion of the work of construction awarded to the petitioner vide Annexures 1 to 3 ,

the petitioner purchased the mineral from various persons engaged in mining activities. It is stated by the petitioner that he had purchased the minerals from mining lease holders after due payment of the royalty. The learned counsel submitted that vide Ex.4, the Assistant Engineer , Mining,Jodhpur was informed by the petitioner that he has purchased the grit after due payment of the royalty and gravel used in the work i.e. 324.47 CUM was well within the quantity permitted under the Short Term Permit(in short STP) issued by the Mining Department. It is stated that the details of the royalty paid and copies of Royalty Ravanna Receipts were also produced before the Assistant Mining Engineer, Jodhpur. The learned counsel submits that the amount of royalty having been already paid by the petitioner , the assessment of the royalty payable made by the Mining Engineer,Jodhpur vide Annexures 5, 8 and 9 and the directions issued in pursuance thereof to the Executive Engineer, P.W.D.,N.H.Division, Jodhpur and Pali, to deduct the amount from the final bill of the petitioner are illegal and unjustified. The learned counsel contended that the petitioner cannot be compelled to pay the royalty twice and on that account the payment of final bill of the petitioner cannot be withheld by the respondent nos. 2 and 3. The learned counsel contended that the orders impugned have been passed by the Mining Engineer without application of the mind. The details of the royalty paid and the Royalty Ravanna Receipts submitted by the petitioner

have not been taken into account while passing the orders impugned.

Per contra, it is contended by the learned Dy. Government Advocate on behalf of the respondents that the receipts submitted by the petitioner did not contain the name of the contractor and the same are not admissible for the construction work. According to the condition no. 5 of the Notification dated 13.11.2000, the Contractor has not submitted Royalty Paid Ravanna for the minerals purchased by him from the mining lease holders. Therefore, the demand for royalty created cannot be faulted with.

It does not borne out from the record that before assessing the liability as aforesaid, any opportunity of hearing was afforded to the petitioner. From bare perusal of the order impugned Annexures 5, 8 and 9,it is apparent that the orders issued are the printed orders wherein the blanks have been filled in. No documents have been placed on record by the respondents to show that the authorities have applied their mind and considered the submissions made by the petitioner. It is settled law that the validity of an order passed by the authority based on certain grounds must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, therefore, the reasons sought to be assigned by the respondent to justify the order cannot be taken into account. In this view of the matter, in my considered

opinion, the order impugned Annexures 5,8 and 9 are not sustainable in the eye of law.

In the result, the writ petition succeeds , it is hereby allowed. Orders impugned Annexures 5, 8 and 9 passed by the Mining Engineer, Jodhpur are hereby quashed. The liability of the petitioner for payment of royalty, if any, shall be assessed by the Mining Engineer afresh in accordance with law by passing a speaking order, after giving the petitioner an opportunity of hearing .

No order as to costs.

(SANGEET LODHA),J.